

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 624

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO REAL PROPERTY; ESTABLISHING A STATUTORY FRAMEWORK FOR PARTICIPATION BY A UNIT OWNER IN A RESIDENTIAL CONDOMINIUM, COOPERATIVE OR OTHER PLANNED COMMUNITY IN DECISIONS AFFECTING THE UNIT OWNER'S INVESTMENT; REQUIRING DISCLOSURE OF AN ASSOCIATION'S FINANCIAL RECORDS TO UNIT OWNERS IN THE ASSOCIATION; REQUIRING AN AUDIT OF FINANCIAL RECORDS OF A RESIDENTIAL CONDOMINIUM, COOPERATIVE OR OTHER PLANNED COMMUNITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Homeowner Participation Act".

Section 2. DEFINITIONS.--As used in the Homeowner Participation Act:

A. "association" mean a homeowners' association or

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 group of participants in a community that makes decisions
2 regarding maintenance, management or expansion of common areas;

3 B. "community" means a residential or mixed-use
4 condominium, cooperative or other planned community in which
5 individual units are sold to at least one owner who is not the
6 developer and in which unit owners share an interest in common
7 lands or facilities;

8 C. "completed unit" means a unit that is ready to
9 be occupied;

10 D. "covenant" means the agreement among unit
11 holders and the developer restricting the uses, sizes, design
12 and character of their common holdings;

13 E. "developer" means a person who holds the
14 construction or zoning permit for the community and who has
15 invested in the materials and labor to create the community;
16 and

17 F. "unit owner" means the owner, or the owner's
18 designee identified in a notarized writing by the unit owner,
19 of a house, apartment, condominium, lot or other single segment
20 in a community.

21 Section 3. ESTABLISHMENT OF AN ASSOCIATION.--As soon as
22 one of the units in a community has sold, a developer shall
23 establish an association and shall:

24 A. organize the association as a nonprofit
25 organization, subject to Section 501(c)(3) or Section 501(c)(4)

.175868.1

underscored material = new
[bracketed material] = delete

1 of the federal Internal Revenue Code of 1986, as a for-profit
2 organization or limited liability company in accordance with
3 the laws of this state;

4 B. convene the first meeting of the association
5 when one-fourth of the total number of units in the community
6 have sold; and

7 C. preside over the association as long as the
8 developer retains a majority of the votes in the association.

9 Section 4. MEMBERSHIP IN THE ASSOCIATION--ORGANIZATION--
10 PARTICIPATION--DUTIES.--The association shall:

11 A. elect officers annually from among unit holders,
12 who shall receive one vote for each completed unit that the
13 unit holder owns. A developer shall receive one vote for each
14 completed unit the developer owns and one-half of one vote for
15 each vacant community lot the developer owns until termination
16 of the developer's role as provided in Section 9 of the
17 Homeowner Participation Act;

18 B. vote on matters that affect the financial status
19 or the character of the community, acting upon majority vote;

20 C. establish, collect and disburse dues collected
21 by unit owners for maintenance and improvement of the
22 community;

23 D. produce a statement allocating financial
24 interests and expenses of each unit in a community,
25 apportioning interests according to a formula that shall be

.175868.1

underscored material = new
[bracketed material] = delete

1 available to the unit owner and that may be overturned upon
2 majority vote of the entirety of the association membership;
3 and

4 E. submit its financial and other records for audit
5 by an independent accountant annually and make these audits
6 available to a unit owner upon request.

7 Section 5. DISCLOSURE REQUIRED.--

8 A. An association shall respond within ten days to
9 a request by a unit owner for information, including the
10 association's and the developer's:

11 (1) fiscal year;

12 (2) operating budget for the current fiscal
13 year;

14 (3) current assessments by unit type,
15 including both regular and special assessments;

16 (4) annual financial statements, including
17 amounts held in reserve;

18 (5) most recent available financial audit and
19 insurance policies, including information on company names,
20 policy limits, deductibles, additional named insureds and
21 expiration dates; and

22 (6) the association's bylaws and rules.

23 B. In addition to the information provided pursuant
24 to Subsection A of this section, an association shall release
25 an annual financial audit completed no later than one hundred

.175868.1

underscored material = new
[bracketed material] = delete

1 eighty days after the end of the association's fiscal year upon
2 request.

3 C. A purchaser of a unit in a community shall
4 receive at closing a statement from the association containing:

5 (1) the name and address of the association's
6 primary contact person;

7 (2) a copy of the bylaws of the association;

8 (3) a statement of the amount of the common
9 regular assessment in the community and the unpaid common
10 regular assessment, special assessment or other assessment, fee
11 or charge currently due and payable from a selling unit owner;

12 (4) a statement as to whether a portion of the
13 unit is covered by insurance maintained by the association;

14 (5) the total balance of the association's
15 cash reserves;

16 (6) a statement as to whether records of the
17 association indicate an alteration or improvement to the unit
18 being sold that violates the covenant of the association; and

19 (7) a statement of pending litigation
20 resulting from actions of the owner, developer or association.

21 Section 6. DECLARATION REQUIRED.--A purchaser of a unit
22 in a community shall be presented at closing, sign and return
23 to the association within fourteen calendar days a declaration
24 stating:

25 "By signing this statement, I acknowledge that I have read

.175868.1

underscored material = new
[bracketed material] = delete

1 and understand the association's contract with me. I also
2 understand that as a matter of New Mexico law, if I fail to pay
3 my association assessments, the association may foreclose on my
4 property.".

5 Section 7. AUDIT REQUIREMENT.--An association shall
6 subject its books and records to audit using generally accepted
7 auditing standards at least annually and shall make the audit
8 available upon request to an interested purchaser of a unit.

9 Section 8. COST OF VIOLATING A COVENANT.--A party
10 aggrieved by an alleged violation of the covenant may sue for
11 actual and punitive damages in the county in which the
12 developer maintains an office or the district court of any
13 county in which a hearing on the matter was conducted. An
14 appellant whose appeal was dismissed without prejudice shall
15 have fifteen days after receiving service of the notice of
16 dismissal to file a notice of appeal in the district court in
17 which the first appeal was properly filed. A party may appeal
18 the district court's decision to an appellate court, which may
19 exercise its discretion whether to grant review. A party may
20 seek further review by filing a petition for writ of certiorari
21 with the supreme court.

22 Section 9. TERMINATION OF DEVELOPER'S ROLE.--A developer
23 shall no longer participate in the affairs of the association
24 sixty days after three-fourths of the units in a community are
25 completed and purchased by unit owners and shall turn over to

.175868.1

underscoring material = new
~~[bracketed material]~~ = delete

1 the association all records, contracts and pending contracts
2 that affect the community.

3 Section 10. APPLICABILITY.--The provisions of the
4 Homeowner Participation Act shall apply to a person who
5 develops a community and persons who purchase units in a
6 community on or after July 1, 2010 and shall turn over to the
7 association records. Contracts and pending contracts that
8 affect the development.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25